



# Drug & Alcohol Contractor Inspections

## 49 CFR Part 199 and 40

Dennis Kuhn



# PHMSA D&A Program

To help prevent accidents and injuries resulting from the use of prohibited drugs and or the misuse of alcohol by employees who perform covered functions for operators of certain pipeline facilities subject to part 192, 193, or 195.



**What is required**

# Requirements

Each operator shall maintain and follow a written anti-drug and alcohol misuse plan that conforms to the requirements of 49 CFR 199 and the **DOT Procedures**

## 199.3 Definitions

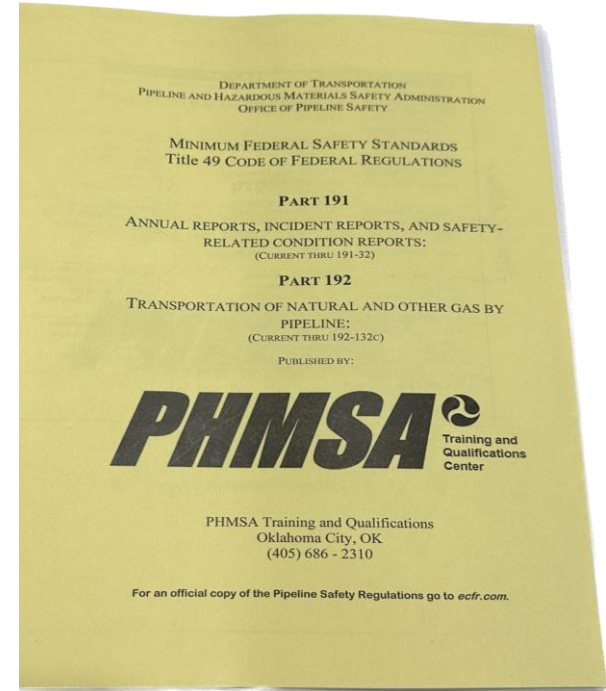
**DOT Procedures** = Procedures for Transportation Workplace Drug and Alcohol Testing Programs published by the Office of the Secretary of Transportation in part 40 of this title





# Common Questions

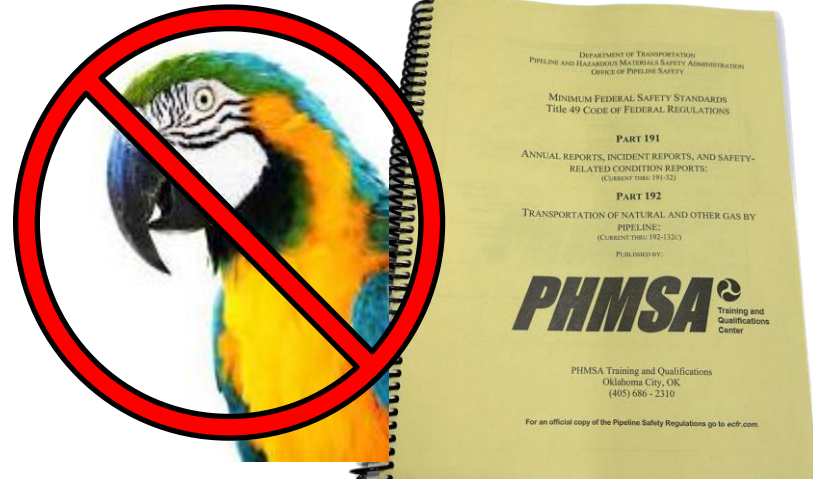
Do I have to have every detail in my written plan from Parts 199 and 40 written in my plan?



# Common Questions

Do I have to have every detail in my written plan from Parts 199 and 40 written in my plan?

***"Although an operator need not repeat the requirements of Parts 40 and 199... the plan must set out in detail the methods and procedures the operator intends to use to meet each of those requirements."***



# Required Testing

## Covered employees for misuse of drugs and alcohol:

- Pre-Employment: Investigation and Drug Testing
- Random (Drug only) - §199.105 C (1) – (4)
  - 2022 Testing rate set by the Administrator is 50%
  - Administrator means: the Administrator, Pipeline and Hazardous Materials Safety Administration or his or her delegate.
- Post-Accident
- Reasonable Suspicion
- Return-to-duty
- Follow-up





# Prohibited Drugs

Prohibited drug means any of the substances specified in 49 CFR part 40 (§40.85).

- marijuana
- cocaine
- opiates
- amphetamines
- phencyclidine (PCP)

***Approved laboratory's, must test for the above five drugs or classes of drugs in a DOT drug test. Must not test "DOT specimens" for any other drugs.***



# Covered Functions



# Required Employees

Who is required to be on a PHMSA D&A program?

Covered employees who perform covered functions on the regulated pipelines or LNG facilities.

Operators must have a process to identify the "covered employees" who perform "covered functions" on the regulated pipelines or LNG facilities.



# Required Employees

Any employee or individual that performs a covered function must meet the federal requirements.

In accordance with §199.3 a covered employee, employee, or individual to be tested is:

A person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.



# Required Employees

Operators must have a process to identify the "covered employees" who perform "covered functions" on a pipeline or LNG facilities.

- Identify Internal Stake Holders (HR, Compliance, Business units/Managers, DER etc.)
  - Policy development for each stakeholder to assure sustainment
- Job Title Identification
  - Titles Identified Within Each Business Unit
  - Determine/Define Scope Within Each Title



# Covered Function

Covered Function is defined as:

Operations, maintenance, or *emergency-response* function regulated by part 192, 193, or 195 that is performed on a pipeline or on an LNG facility.

Operators of underground gas storage facilities must also comply with 49 CFR Part 199.





# Covered Function

Operations means to control the movement or storage of gas, LNG, hazardous liquids, or carbon dioxide.

Maintenance means those functions intended to preserve a pipeline or LNG facility for future use. It includes the addition or replacement of pipe sections but not new pipeline construction.



# Covered Function

Emergency Response means actions taken to identify emergencies, to stop the flow of product from a release, and to protect people and the environment. It does not include clean up or remediation.

## Interpretation Response #PI-22-0004

Response Publish Date: 05-12-2022

“As with operations and maintenance, only those emergency-response functions performed on the pipeline are D&A covered functions, regardless of whether the functions are listed in § 192.615.”



# Covered Function

Pipeline (192.3): all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

Pipeline (195.2): all parts of a pipeline facility through which a hazardous liquid or carbon dioxide moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.



# Covered Function

PHMSA Finding: NOPV

*Operator failed to properly distinguish its DOT/PHMSA covered employees as defined in §199.3 from its non-covered employees. Company, or its C/TPA, placed employees not covered by the PHMSA D&A regulations into the same random drug testing pool with DOT/PHMSA covered employees.*



# **Drug & Alcohol Testing Management Information System (DAMIS)**



# DAMIS Submittal

Pipeline Operators with more than 50 covered employees are required to submit an MIS report annually.

Small operators (50 or fewer covered employees) subject to 49 CFR 199 are required to submit an MIS report only upon PHMSA's written notice.

PHMSA regulations require operators to submit D&A MIS data reports online at <http://damis.dot.gov>

United States  
Department of Transportation

2022 Drug & Alcohol Testing Management Information System

Login

User Name:

Password:

[Click here to obtain a user name and password or if you have any questions.](#)

**WARNING:**  
You are accessing a U.S. Government information system. This information system, including all related equipment, networks, and network devices, is provided for U.S. Government-authorized use only. Unauthorized or improper use of this system is prohibited, and may result in civil and criminal penalties, or administrative disciplinary action. The communications and data stored or transiting this system may be, for any lawful Government purpose, monitored, recorded, and subject to audit or investigation. By using this system, you understand and consent to such terms.

DOT PH  
Privacy Policy





# DAMIS Submittal

## How to calculate employees:

To determine the number of covered employees, include employees for the primary OpID and all business unit OpID(s) covered by the report.

- If your covered employees are in a random drug testing pool managed by a consortium, count only your own covered employees.
- If you have employees subject to D&A testing under more than one DOT agency, count only those employees who were drug and/or alcohol tested under PHMSA, as shown on the Federal Drug Testing Custody and Control Form (CCF).
- Do not include contractor employees in this calculation.



# DAMIS Submittal

March 2023						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Wednesday, Mar 15th 2023

For Pipeline Operators that are required to submit MIS data, you are required to submit your contractor drug and alcohol information for those companies who performed covered work in calendar year 2022 by 15 March 2023.

Note: The deadline to submit is not the time to find out your contractors or internal program did not meet the minimum testing requirement(s).



# DAMIS Submittal Common Findings

## Common issues

- Contractor(s) did not meet required testing percentages
- Contractor(s) did not have an approved D&A Plan
- Contractor(s) data incorrect
- Operator could not identify who performed covered work
- No contractor monitoring throughout reporting year
- TPA submitted incorrect data



# DAMIS Submittal Common Findings

## Recommendations

- Constant monitoring of Contractor D&A Compliance
  - ✓ Conduct initial and periodic audits of Contractors D&A program
  - ✓ Assure contractors meet the federal requirements prior to allowing work performed
  - ✓ Monitor contractor compliance throughout the year
  - ✓ Audit TPA's
- ✓ Track who performed covered work



# **Contractor D&A Program Inspections**



# Responsibilities

Operators are responsible for meeting 49 CFR parts 40 and 199 to include but not limited to:

- Maintain and follow a written Anti-Drug & Alcohol Misuse Prevention Plan that conforms to the requirements
- Ensure all covered employees are aware of the provisions and coverage of the plan
- All actions of your officials, reps, and agents (including service agents) in carrying out the requirements of the DOT agency regulations
- Contractor compliance





# Contractor D&A Programs

Operators' compliance requirements include contractor programs per:

- 199.115
- 199.245

Evergreen: 4/1/17

## Section 199.115: Contractor employees.

With respect to those employees who are contractors or employed by a contractor, an operator may provide by contract that the drug testing, education, and training required by this part be carried out by the contractor provided:

- (a) The operator remains responsible for ensuring that the requirements of this part are complied with; and
- (b) The contractor allows access to property and records by the operator, the Administrator, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of this part.

[53 FR 47096, Nov. 21, 1988. Redesignated by Amdt. 199-19, 66 FR 47118, Sept. 11, 2001]

# Contractor D&A Programs

## §199.115 Subpart B (Drug testing) Contractor employees

With respect to those employees who are contractors or employed by a contractor, an operator may provide by contract that the drug testing, education, and training required by this part be carried out by the contractor provided:

- a) The operator remains responsible for ensuring that the requirements of this part are complied with; and
- b) The contractor allows access to property and records by the operator, the Administrator, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of this part.



# Contractor D&A Programs

## §199.245 Subpart C (Alcohol testing) Contractor employees

With respect to those covered employees who are contractors or employed by a contractor, an operator may provide by contract that the alcohol testing, training and education required by this subpart be carried out by the contractor provided:

- a) The operator remains responsible for ensuring that the requirements of this subpart and part 40 of this title are complied with; and
- b) The contractor allows access to property and records by the operator, the Administrator, any DOT agency with regulatory authority over the operator or covered employee, and, if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purposes of monitoring the operator's compliance with the requirements of this subpart and part 40 of this title.



# Contractor D&A Programs

Are you prepared for an audit? What is your process?

## A-9: Contractor Anti-Drug and Alcohol Misuse Prevention Programs

If a pipeline operator allows contractors who perform covered functions on the operator's regulated pipeline or LNG facility to conduct their own D&A Programs

☐

Does the operator have a process to oversee contractors to ensure they comply with Parts 199 and 40? [§199.115 & §199.245]

☐

Do the contractors allow access to property and records by the operator, PHMSA, and a representative of a state agency (if applicable) to allow for the monitoring the operator's compliance with Part 199? [§199.115(b)].

☐

No Issue Identified

☐

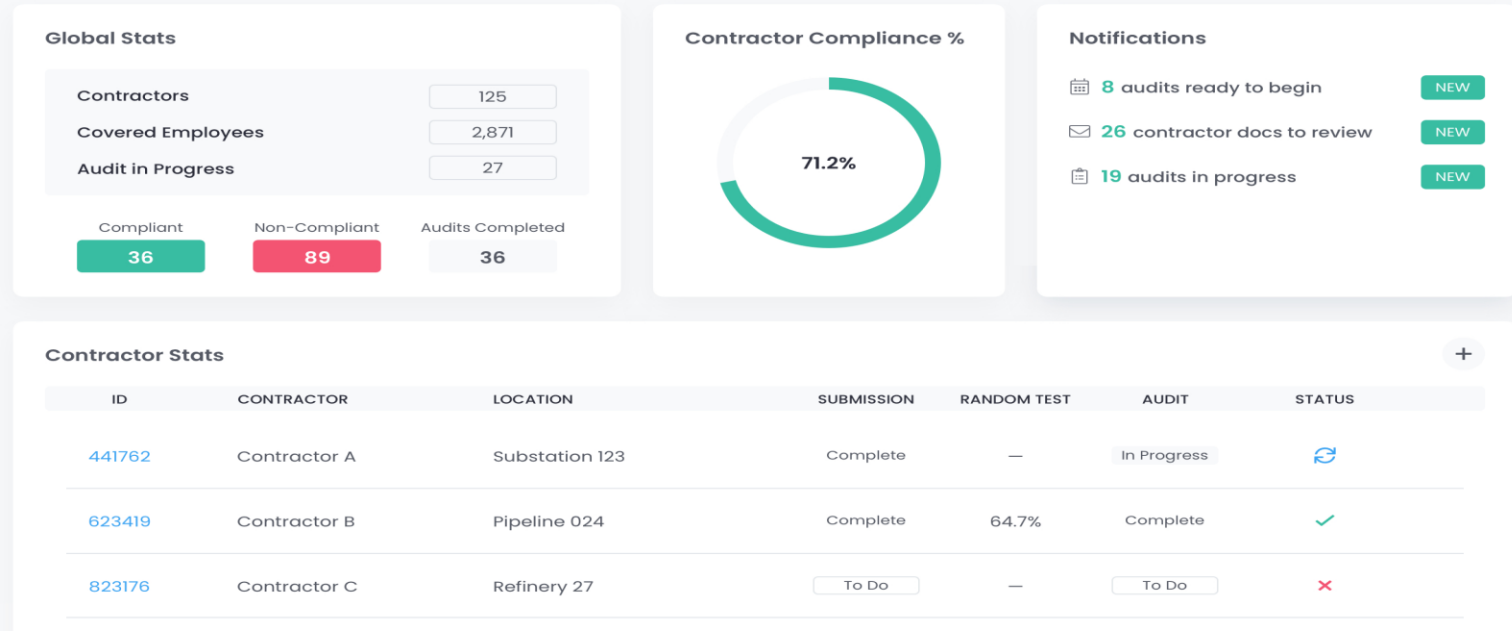
Potential Issue Identified

Notes:



# Responsibilities

Develop a process to audit and monitor your contractor(s) D&A programs to gauge effectiveness and ensure it satisfies requirements



# Contractor D&A Programs

## Conduct Inspections / Reviews

- Review Internal and contractor plans.
  - December is typically when the Administrator updates the testing percentages.
    - ***Notify Contractor(s) to review/update plans as applicable.***
  - Stay up to date with rule changes.
  - Review Covered Pool – do not flood the pool
- Ensure contractor plans meet requirements
  - Conduct reviews before allowing covered work and annual basis
  - Plan reviews should also include document reviews to assure compliance with plan.



# Contractor D&A Programs

## Conduct Inspections / Reviews

- Review and maintain contractor covered employee pool listing(s)
  - Have a process to verify the employees working are on the pool.
- If using a 3rd party to monitor contractor programs, periodically review/audit the process.
  - Conduct reviews/audits on contractor management company to assure program meets minimum requirements
    - Do you have access to audit documents for your review?
    - Are plans reviewed / audited annually?



# Common Findings Contractor D&A Program

- Company DER not trained
- Flooding the covered employee pool
- Plan does not meet 199 and part 40 requirements
- Company not maintaining records
- 3rd party company not conducting annual assessments
- No supervisor training
- No statical data

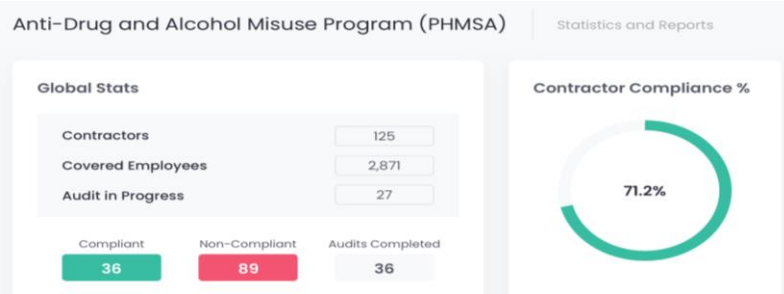




# Program Challenges



# Challenges



## Program Monitoring

- Consortia / Third Party Administrators (TPA's)
- Contractor Compliance



## State laws

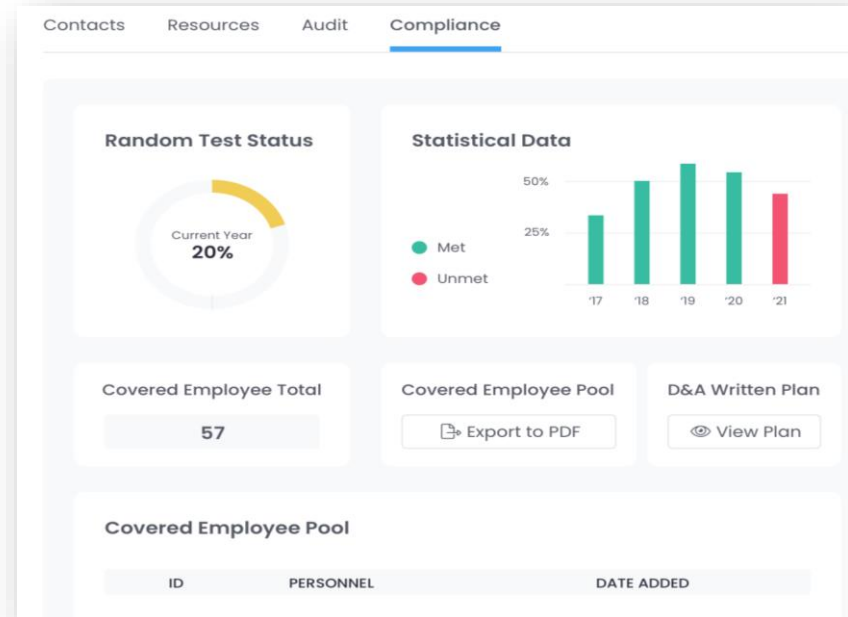
- Medical marijuana
- Recreational use



# Program Monitoring/Maintenance

Develop method for contractor compliance and continued monitoring

- Review Contractor D&A Plans for compliance
- Conduct random/periodic inspections (contractor/TPAs)
- Monitor statistical data monthly/quarterly basis
- Verify Covered employee list at the job site prior to allowing covered work to commence



# State Laws – Public Perception

Support For Marijuana Legalization Remains At Record High - *2022 Gallup poll*



GALLUP



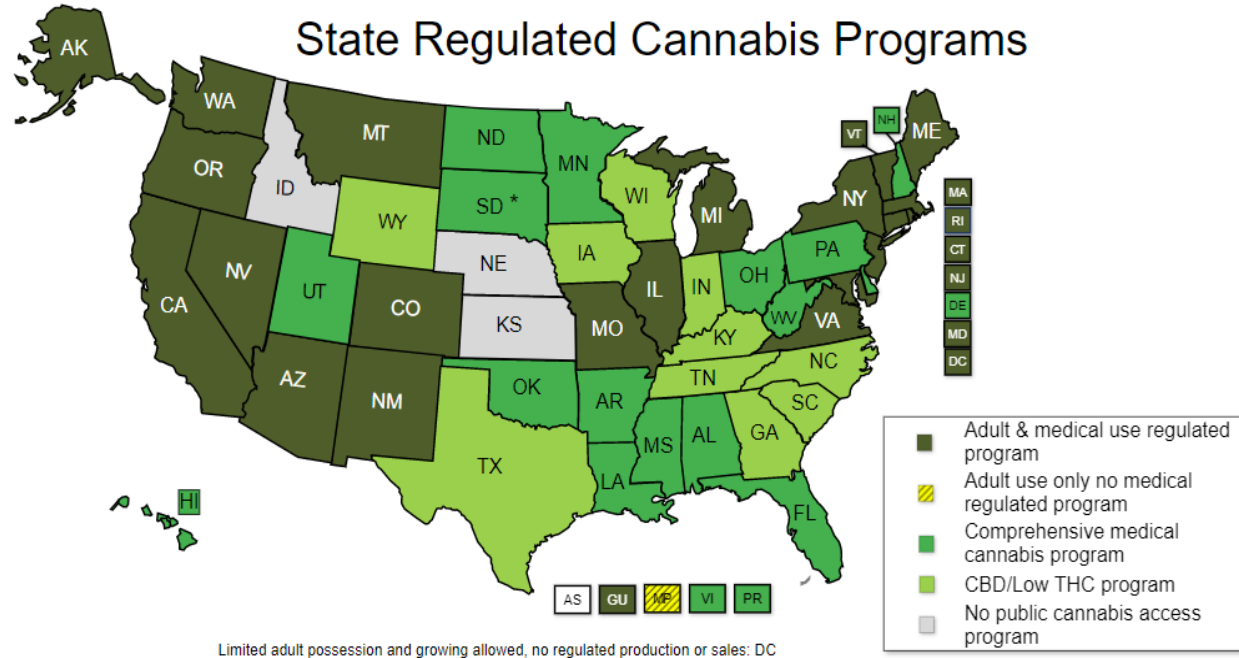
# Americans' Support for Legalizing Marijuana Among Demographic Groups

Do you think the use of marijuana should be made legal, or not?

	Yes, legal %
<b>Gender</b>	
Male	69
Female	66
<b>Age group</b>	
18-29	79
30-49	75
50-64	60
65+	55
<b>Education</b>	
Not college grad	64
College grad	76
<b>Household income</b>	
Less than \$40,000	67
\$40,000-100,000	68
\$100,000+	74

# State Laws

- Recreational marijuana legal in 22 states plus the District of Columbia (DC).
- Medical marijuana legal in 38 states plus DC.
- CBD / Low THC Legal in 10 states.



November 2022



# State vs. Federal

- Medical use and/or State legalized use of controlled substances
- CFR 49 parts 40 and 199 = Federal requirement
- DOT "Marijuana" Notice(s) – Add to company PHMSA D&A Plan

<https://www.transportation.gov/odapc>

- Medical Marijuana Notice (2009)
- Recreational Marijuana Notice (2012)
- DOT "CBD" Notice (2020)



# Rule Changes / Updates





# Proposed Rule Changes

## Proposed Rule : Include Oral Fluid Testing – (RIN 2105-AE94)

On February 28, 2022, DOT published in the Federal Register a notice of proposed rulemaking proposing to amend its transportation industry drug testing program procedures regulations, 49 CFR part 40, to include oral fluid testing. The proposal includes other provisions to update the Department's regulation, and to harmonize, as needed, with the new Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid established by the U.S. Department of Health and Human Services.



# Proposed Rule Changes

## DOT COVID-19 Drug & Alcohol Testing Statement of Enforcement Discretion for Substance Abuse Professionals and Service Agents

Effective July 1, 2022, ODAPC now extends the statement only for remote SAP evaluations, through December 31, 2022. Also, effective July 1, 2022, ODAPC will not extend the statement for the requalification timelines for service agents.



# Questions?

## Thank You & Stay Safe

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